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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

2010 JUN 29 P 1:14

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

JUN 29 2010

DOCKETED BY

IN THE MATTER OF THE FORMAL
COMPLAINT OF QWEST CORPORATION
AGAINST ARIZONA DIALTONE, INC. TO
ENFORCE ITS INTERCONNECTION
AGREEMENT.

DOCKET NO. T-03608A-07-0694

DOCKET NO. T-01051B-07-0694

PROCEDURAL ORDER

BY THE COMMISSION:

On December 17, 2007, Qwest Corporation ("Qwest") filed with the Arizona Corporation Commission ("Commission") a Complaint against Arizona Dialtone, Inc. ("Arizona Dialtone"). The Complaint stems from a dispute between Qwest and Arizona Dialtone over implementation of the Federal Communications Commission's ("FCC's") Triennial Review Remand Order¹ ("TRRO") and amendment of the Interconnection Agreement ("ICA") between Qwest and Arizona Dialtone. At the same time, Qwest filed with the Commission a Petition for Arbitration under 47 U.S.C. § 252(b) and Arizona Administrative Code ("A.A.C.") R14-2-1505 ("Petition"), arising out of the same dispute.² Decision No. 70460 was issued in the Arbitration matter on August 6, 2008, ordering Qwest and Arizona Dialtone to enter into an ICA amendment including Qwest's language, as modified in the Decision, for the ICA amendment sections in dispute. The Decision required Qwest and Arizona Dialtone to submit the signed ICA amendment to the Commission for its review by September 5, 2008. The ICA amendment was filed with the Commission on September 5, 2008, and went into effect by operation of law.

After Decision No. 70460 was issued, both Qwest and Arizona Dialtone expressed a desire to use this Complaint docket to resolve back-billing issues that were not resolved in the Arbitration matter. No regular procedural schedule was established in this docket, however, largely because Arizona

¹ *In re Unbundled Access to Network Elements, Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 20 F.C.C.R. 2533 (2005)(Order on Remand).

² The Arbitration matter was assigned to Docket No. T-01051B-07-0693 et al.

1 Dialtone had filed a Complaint and Motion for Stay against the Commission and Qwest in U.S. District
2 Court challenging Decision No. 70460's requirement for the ICA amendment to include language
3 allowing Qwest to back bill Arizona Dialtone the difference between the UNE-P rates Arizona Dialtone
4 paid and the corresponding resale rates for the services received during the post-transition period. The
5 district court case is still pending.

6 Procedural conferences were held in this matter on January 14, 2008; February 6, 2008; March
7 31, 2008; April 22, 2009; and May 11, 2009.

8 On May 18, 2009, Arizona Dialtone filed a notice stating that it had filed a Chapter 11 Petition
9 in Bankruptcy on that day and that this matter was thus subject to the automatic stay provisions of 11
10 U.S.C. § 362.

11 By a Procedural Order issued on May 21, 2009, pending filing requirements were stayed, and
12 an upcoming procedural conference was vacated.

13 On October 15, 2009, Qwest filed a request for a procedural conference to discuss proceeding in
14 this matter. On October 27, 2009, a Procedural Order was issued requiring Qwest to make a filing
15 explaining why the 11 U.S.C. § 362 automatic stay provision would not prevent the Commission from
16 holding any proceeding in this matter and setting forth what Qwest desired to accomplish through a
17 procedural conference and requiring Commission Utilities Division Staff ("Staff") to file a response to
18 Qwest's filing. Arizona Dialtone was not required to make any filing.

19 In its filing, made on November 9, 2009, Qwest argued that the Bankruptcy Court had
20 implicitly lifted the automatic stay, but also stated that Qwest would file a Motion for Stay Relief in the
21 Bankruptcy Court and would inform the Commission as soon as such stay relief was granted so that a
22 procedural schedule could be established.

23 On November 19, 2009, Arizona Dialtone made a filing stating that the automatic stay remained
24 in place and that the Commission thus lacked authority to conduct any proceedings in this matter.

25 In its filing, made on November 24, 2009, Staff agreed that Qwest should file a Motion for Stay
26 Relief in Bankruptcy Court and that no procedural schedule should be established until after the
27 Bankruptcy Court granted such relief.

28 On May 26, 2010, the Bankruptcy Court dismissed Arizona Dialtone's bankruptcy petition

1 without prejudice pursuant to an Arizona Dialtone Motion to Dismiss.

2 On June 4, 2010, Qwest and Arizona Dialtone filed a Joint Motion to Dismiss this matter,
3 stating that they have entered into a Settlement Agreement and Mutual Release ("Settlement
4 Agreement") in which Qwest releases and forever discharges Arizona Dialtone from all claims asserted
5 in this Complaint and Arizona Dialtone releases and forever discharges Qwest from all claims and
6 counterclaims arising out of the parties' ICA as amended. The parties stated that a copy of the
7 Settlement Agreement had been provided to Staff. The parties requested that the Complaint be
8 dismissed, asserting that the automatic stay provisions of 11 U.S.C. § 362 no longer apply because of
9 the dismissal of the bankruptcy petition.

10 As it appears from the parties' Joint Motion to Dismiss that this matter has been resolved to
11 the parties' mutual satisfaction through the Settlement Agreement, it is reasonable and appropriate to
12 grant the parties' Joint Motion to Dismiss and to administratively close this docket.

13 IT IS THEREFORE ORDERED that the **Complaint is hereby dismissed.**

14 IT IS FURTHER ORDERED that **this docket is hereby administratively closed.**

15 DATED this 29th day of June, 2010.

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18 
19 SARAH N. HARPRING
ADMINISTRATIVE LAW JUDGE

20 Copies of the foregoing mailed/delivered
this 29th day of June, 2010, to:

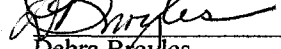
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By: 
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